

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC,	)	CASE NO. 1:19-cv-145
	)	
Plaintiff,	)	JUDGE DAN AARON POLSTER
	)	
v.	)	MAGISTRATE JUDGE
	)	THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO,	)	
LLC, <i>et. al.</i> ,	)	
	)	
Defendants.	)	

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APPLICATION TO APPOINT MORGAN STANLEY SMITH BARNEY LLC  
TO CLOSE 401(K) PLAN OF DREAM CENTER EDUCATION HOLDINGS

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Mark E. Dottore (the “**Receiver**”), the duly appointed, qualified, and acting Receiver of the Receivership Entities in this case respectfully represents to the Court that Dream Center Education Holdings LLC is the sponsor of a tax-qualified, defined-contribution pension account defined in subsection 401(k) of the Internal Revenue Code (the “**401(k) Plan**”) that must be administered and terminated according to the regulations promulgated under the Employee Retirement Income Security Act of 1974 (“**ERISA**”). At the time the Receiver was appointed, the 401(k) Plan was shared by the employees of DCEH, Argosy, New South and New AI. At December 31, 2018, the 401(k) Plan had 8,207 participants and \$482.6 million in managed assets. At March 31, 2019, the 401(k) had 7,356 participants and \$457.7 million in managed assets. Fidelity Investments in Boston, Massachusetts is the

401(k) Plan administrator. The consultant for the 401(k) Plan is River and Mercantile in Waltham, Massachusetts.

The Receiver would like streamline the receivership by terminating the 401(k) Plan in an orderly way. Such a termination will allow DCEH 401(k) Plan participants to access and rollover their retirement savings accounts to private IRA accounts. In addition, the termination of the 401(k) Plan will allow New South to spinoff their 401(k) participants to New South's newly formed qualified 401(k) transferee plan and will allow for that same possibility for New AI. To accomplish these transitions, DCEH requires the services of Graystone Consulting ("**Graystone**"), a division of Morgan Stanley Smith Barney LLC which is a wholly-owned indirect subsidiary of Morgan Stanley & Co. ("**Morgan Stanley**") to act as fiduciary to administer and terminate the 401(k) Plan's activities. In support of this Application the Receiver says as follows:

1. Attached to this Application as Exhibit A is a Discretionary Institutional Consulting Agreement (the "**Consulting Agreement**") that the Receiver proposes to enter into with Morgan Stanley. Under the Consulting Agreement, Morgan Stanley will charge a fee of \$100,000 annually (*See Consulting Agreement*, p. 10) (the "**Morgan Stanley Fees**"). In return for the Morgan Stanley Fees, Morgan Stanley will offer the following services:

- Investment Policy Statement Review
- Fund Selection;
- Fund Monitoring and Removal;

- Performance Reporting;
- Investment Education; and
- Providing of fiduciary services as an investment manager under Section 3(38) of ERISA.

2. The Morgan Stanley Fees will be paid out of “forfeiture amounts,” which are sums forfeited by employees who terminated their participation in the 401(k) Plan prior to the full vesting of employer contributed or matching funds. In the event that the forfeiture amounts are insufficient to pay the Morgan Stanley Fees, those fees can legally be charged to the 401(k) Plan participants. The Morgan Stanley Fees are reasonable in the circumstances and are the normal fees charged by Morgan Stanley for services of like kind and complexity.

3. Graystone is well qualified to perform the services outlined in the Consulting Agreement, because it has terminated 401(k) plans of similar size and complexity *nine times*. Attached as Exhibit B is a business and team overview of Graystone and Morgan Stanley. In 2018, Graystone consulted on over \$300 billion of client assets and ranks among the top 25 largest investment consulting firms in the country. They are located in Hudson, Ohio.

4. It is in the best interest of the receivership estate, and the thousands of former employees who participate in this 401(k) Plan to authorize the Receiver to employ Graystone and Morgan Stanley. These employees have their life savings at stake, and it is imperative that capable financial advisors look after their interests.

5. Neither Graystone nor Morgan Stanley represent an interest adverse to the within estate, and are not so connected with any party in these proceedings, any Judge of this Court or the Receiver or his professionals as to make their employment or appointment improper. The affidavit of Robert Mandel (the “**Mandel Affidavit**” swearing the same is attached hereto as Exhibit C.

6. The introduction of the Receiver to Graystone and Morgan Stanley was made by James R. Sophia, Jr., a Vice President and Financial Advisor at Morgan Stanley, who is the former brother in law of the Receiver.<sup>1</sup> As the Mandel affidavit indicates, Mr. Sophia has not and will not receive, promise or give anything of value for this introduction. Similarly, the Receiver has not and will not receive, promise or give anything of value for selecting Morgan Stanley as the consultant to the 401(k) Plan.

WHEREFORE, the Receiver, prays this Honorable Court for an Order authorizing him to employ the Graystone and Morgan Stanley upon the terms and conditions set forth herein, for the purpose of offering consulting services to the 401(k) Plan and for termination of the 401(k) Plan, and for such other and further

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<sup>1</sup> Mr. Sophia’s wife and the Receiver’s estranged wife, are sisters.

relief as this Court may deem just.

Dated: June 13, 2019

Respectfully submitted,

/s/ Mary K. Whitmer

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